

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed October 7, 2004. Reconsideration and allowance of the application and presently pending claims 1-28 are respectfully requested.

1. Present Status of Patent Application

Claims 1-28 remain pending in the present application.

2. Response to Double Patenting Rejection of Claims 1-28

In the Office Action, claims 1-28 stand rejected under the judicially created doctrine of obviousness-type double patenting over *Dow et al.* (U.S. Patent 6,301,020), hereinafter *Dow*.


In order to reduce the number of disputed issues and to facilitate early allowance of the now pending claims in the present application, a Terminal Disclaimer is filed herewith in compliance with 37 C.F.R. §1.321(c) to overcome the double patenting issue. Accordingly, Applicants respectfully request that the double patenting rejection to pending claims 1-28 be withdrawn.

In filing the Terminal Disclaimer, Applicants rely upon the rulings of the Federal Circuit that the filing of such a Terminal Disclaimer does not act as an admission, acquiescence, or estoppel on the merits of the obviousness issue. "In legal principal, the filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither presumption nor estoppel on the merits of the rejection." *Quad Environmental Tech v. Union Sanitary*, 946 F.2d 870, 874 (Fed. Cir. 1991); and *Ortho Pharmaceutical Corp. v. Smith*, 959 F.2d 936, 941-942 (Fed. Cir. 1992).

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-28 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,


Raymond W. Armentrout
Reg. No. 45,866